IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 505 OF 2005

Arvind Shankarrao Raut ... Appellant

V/s

Smt. Venubai Shankarrao Raut & ors. ... Respondents

Mr. Nikhil Arjunwadkar holding for Shri G.S. Godbole for the appellant.

Mr. V.G. Mujumdar for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 25TH AUGUST, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Addl. District Judge, Pandharpur, dated 12.4.2004 dismissing the appeal and confirming the judgment and order passed by the Civil judge, S.D., Pandharpur, dated 5.1.1993 dismissing the plaintiff’s suit.

2. Heard learned counsel for both parties. Perused the record.

3. The plaintiff filed the suit for declaration that the order passed by the Surplus Land Determination Tribunal about surplus lands be declared null and void. Alternatively, declaration was sought to the effect that the plaintiff was not party to those proceedings, those orders cannot be enforced against him and alternatively that the plaintiff is in actual possession of the suit land for more than 12 years and his title was perfected by adverse possession. According to him, the title of the deceased had lost and the suit lands cannot be delimited as surplus lands.

4. Defendants contested the suit inter-alia submitting that the allegations made by the plaintiff were not correct and hence the suit was sought to be dismissed.

5. The Trial Court heard the dispute on merits and came to the conclusion that the plaintiff had failed to prove that the order of Surplus Land Determination Tribunal is obtained by fraud by defendant No.1 and, therefore, it cannot be held that the order was null and void. Alternatively, the plaintiff also failed to prove perfection of his title by adverse possession and, as such, the suit for declaration and adverse possession came to be dismissed.

The appeal was carried to the Court of Addl. District Judge, Pandharpur. The learned Addl. District Judge, after hearing both parties concurred with the findings recorded by the Trial Judge and dismissed the appeal. Hence the present appeal.

6. At the outset, it may be noted that there is absolutely no substantial question of law involved in this appeal. The plaintiff's suit was basically founded upon the allegation that the order of the Tribunal was obtained by fraud and admittedly there is not an iota of any evidence on record to show that there was fraud involved while passing the order by the Surplus Land Determination Tribunal. Regarding alternative prayer that the plaintiff was in adverse possession, it is essentially an issue of fact which cannot be determined at the time of second appeal especially in the event of concurrent findings to that effect. The learned counsel for the appellant sought to raise various aspects which were neither raised nor were the subject matter of the issues adjudicated by both the Courts below and wanted to raise those issues for the first time in this appeal at the time of admission. However, it is also to be noted that those issues which were sought to be raised,

were already adjudicated by writ Court and the writ was dismissed. Inspite of this fact, the learned counsel for the appellant sought to raise issues again for the first time in this second appeal and for obvious reasons those could not be considered at all.

7. Be that as it may, the fact remains that, it is not within the domain of the High Court to investigate the grounds on which the findings were arrived at by the last Court of fact being the first appellate Court. This is especially so when both the Courts below have found to have appreciated the evidence in proper perspective and thus the concurrent findings recorded by both the Courts below cannot be faulted with and, as such, the appeal is devoid of any merits.

In the result, the appeal stands dismissed with no order as to costs.

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